

REMARKS

In the Office action¹ of March 24, 2006, the Examiner rejected claims 15 and 31 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner also rejected claim 41 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. In addition, the Examiner rejected claims 1-3, 7, 11-13, 16-19, 23, 27-29, 32-37, and 40 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,605,081 to Helmly, Jr. et al. (*Helmly*). The Examiner also rejected claims 4-6, 8-10, 14, 20-22, 24-26, 30, 31, 38, and 39 under 35 U.S.C. § 103(a) as being unpatentable over *Helmly*.

Applicant has amended claims 1, 15, 17, 31, and 33 to further define aspects of Applicant's invention. No new matter has been added. Claims 14 and 30 have been canceled without prejudice.

Applicant respectfully traverses the 35 U.S.C. § 112, second paragraph rejection of claims 15 and 31. Claims 15 and 31, as amended, include the step of "calculating a standard deviation of the payload weight data." This calculation is then multiplied by a predetermined factor to obtain an offset. Support for this amendment may be found, for example, in paragraph 45, page 12 of the specification. Therefore, Applicant submits that this amendment "provides" the standard deviation and renders the Examiner's

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

objection moot. Applicant respectfully requests that the Examiner withdraw the rejection of claims 15 and 31 under 35 U.S.C. § 112, second paragraph.

Applicant respectfully traverses the 35 U.S.C. § 112, first paragraph rejection of claim 41. In the Office action, the Examiner alleged that claim 41 contains subject matter which is not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention (Office action at p. 2). According to the guidelines for the examination of patent applications under 35 U.S.C. § 112, first paragraph, as set forth in MPEP § 2163, the Examiner must have a reasonable basis to challenge the adequacy of the written description. The Examiner has the initial burden of presenting, by a preponderance of evidence, why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims.

Claim 41 is directed to a "method for scheduling maintenance for one or more pieces of equipment subject to a payload standard." In support of this feature, the specification recites, for example, "if the system determines that a piece of equipment is frequently operated at higher than the target payload, it may be called for maintenance more frequently than a piece of equipment that less frequently surpasses the target payload" (Specification at p. 17-18). Furthermore, the specification states, "the system provides valuable information in a timely manner to both monitor compliance and allow adjustments where necessary to ensure future compliance" (Specification at p. 18). These exemplary passages from the specification support the objected to language. Thus, Applicant respectfully submits that claim 41 contains subject matter which is described in the specification in such a way as to enable one

skilled in the art to which it pertains to make and/or use the invention. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claim 41 under 35 U.S.C. § 112, first paragraph.

Applicant respectfully traverses the 35 U.S.C. § 102(b) rejection of claims 1-3, 7, 11-13, 16-19, 23, 27-29, 32-37, and 40 for at least the reason that *Helmly* fails to disclose every claimed element. For example, independent claim 1, as amended, recites a combination of steps including, *inter alia*, "calculating a modified target payload weight based on an analysis of previous payload weight."

Helmly fails to disclose at least this step of the claimed method. *Helmly* discloses a process "to automatically measure the gross weight, load, and length of trucks, such as at refineries, truck terminals, and depots" (Abstract). As part of its method, *Helmly* "compares the maximum allowable loaded weight with the actual scale weight and automatically actuates a printer to print a bill of lading for the truck, if the actual scale weight is less than the maximum legal weight" (column 2, lines 8-12). Thus, while *Helmly* measures equipment weight, it does not calculate a modified target payload weight based on an analysis of previous payload weight.

For at least this reason, the rejection of claim 1 under 35 U.S.C. § 102(b) is insupportable and should be withdrawn. In addition, claims 2-3, 7, 11-13, and 16, which ultimately depend from independent claim 1, are allowable for at least the same reasons as cited above. Further, each of these dependent claims may recite unique combinations that are neither taught nor suggested by the prior art. Independent claims 17, 33, and 40, although of different scope, recite similar features. Therefore, these claims are also allowable for at least the same reasons as cited above. Dependent

claims 18-19, 23, 27-29, 32, and 34-37 depend from one of these independent claims and are allowable for at least the same reasons.

Applicant respectfully traverses the 35 U.S.C. § 103(a) rejection of claims 4-6, 8-10, 14, 20-22, 24-26, 30, 31, 38, and 39. Regarding dependent claims 4-6, 8-10, 20-22, 24-26, and 31, *Helmly* fails to disclose or suggest the subject matter of independent claims 1 and 17, from which these claims depend. *Helmly* fails to teach or suggest the step of “analyzing compliance with the payload standard based on the results of the comparison and calculating a modified target payload weight based on an analysis of previous payload weight,” as recited in the independent claims and as therefore required by the dependent claims. In addition, each of these dependent claims may also recite unique combinations that are neither taught nor suggested by the cited art.

Regarding independent claim 38, the Examiner stated that “it would have been obvious to one of ordinary skill in the art to obtain payload compliance data to check for compliance as overloading a vehicle could void warranty” (Office action at p. 6). Claim 38 recites, *inter alia*, a “method for reviewing a request for warranty service on a piece of equipment subject to a payload standard.” *Helmly* fails to disclose this method. *Helmly* discloses a process to “measure the load and length of trucks, such as at refineries, truck terminals, and depots, to assure compliance with state highway laws and regulations” (column 1, lines 55-59). Therefore, nothing in *Helmly* teaches or suggests a method for reviewing a request for warranty service on a piece of equipment subject to a payload standard. Accordingly, for at least these reasons, Applicant respectfully requests that the Examiner withdraw the rejection of claim 38 under 35

U.S.C. § 103(a). Claim 39 depends from independent claim 38 and is therefore allowable for at least the same reasons.

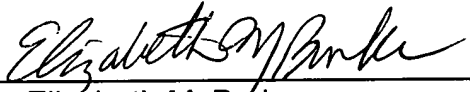
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By: 
Elizabeth M. Burke
Reg. No. 38,758